

WILLIAM J. SULLIVAN
Plaintiff

: SUPERIOR COURT
:
:
: JUDICIAL DISTRICT OF WATERBURY
:
: AT WATERBURY

STATE OF CONNECTICUT
JUDICIAL BRANCH
Intervening Plaintiff

v.

ANDREW J. McDONALD and
MICHAEL P. LAWLOR,
Defendants

: JULY 13, 2006

This case indeed presents an unprecedented and significant constitutional question -- whether the separation of powers doctrine bars the legislative branch from exercising its investigative subpoena power to seek testimony from a former Chief Justice of the Connecticut Supreme Court who committed his own separation of powers violation by delaying the release of a decision of that Court with the intent and effect of interfering with the Legislature's constitutional power to appoint judges pursuant to Article Fifth, § 2, of the Connecticut constitution. In other words, the question before this Court is whether the former Chief Justice -- and indeed the whole Judicial Branch -- may use the separation of powers doctrine to shield himself -- and itself -- from the Legislature's chosen inquiry into his own separation of powers violation. Contrary to this Court's conclusion, the answer to this question must unequivocally be "no."

Our Supreme Court has frequently recognized the importance of maintaining the balance of power among the three branches of state government, characterizing the separation of powers as “one of the fundamental principles of the American and Connecticut Constitutional systems.” Stolberg v. Caldwell, 175 Conn. 586, 598 (1978), appeal dismissed sub nom., Stolberg v. Davidson, 454 U.S. 958 (1981). Indeed, the Court has gone so far as to describe the separation of powers as “one of the greatest achievements” of our state constitution State v. McCahill, 261 Conn. 492, 505 (2002).

Contrary to this Court’s decision, the Legislature’s concededly legitimate inquiry seeks to **preserve** -- not impair -- this critical balance between the judicial and legislative branches by investigating Justice Sullivan’s apparent intentional interference with the Legislature’s constitutional and statutory duty to appoint the next Chief Justice. The lack of an existing “appointment” is totally irrelevant. Justice Sullivan’s actions are a constitutional affront -- clouding and confusing the task of filling a vacancy. Indeed, the uncertainties surrounding his interference may paralyze the process.

Even without a pending nomination, the Legislature requires Justice Sullivan’s sworn testimony to answer the many significant questions raised by his conduct, including issues concerning the nature and scope of his efforts to manipulate the appointment of his successor. The Legislature must have answers to these questions so it can wisely and effectively exercise its exclusive appointment authority concerning both the existing vacancy in the position of Chief Justice and other future appointments.

As the Supreme Court concluded in Office of the Governor v. Select Committee on Inquiry, 271 Conn. 540, 580 (2004), barring the Legislature categorically from appropriate testimony would be highly anomalous and antithetical to our constitution -- the Court used the term “constitutionally peculiar” -- when the Legislature is acting to vindicate the separation of powers provision. Here, as there, the Legislature should not be categorically barred by that very provision from securing testimony from the best source of information regarding the alleged intrusion into its powers. This Court should conclude that the present inquiry, like an impeachment inquiry, is one of the constitutionally permissible situations in which the Legislature may subpoena a judge’s testimony. The Legislature is conducting a valid investigative hearing, not an informational hearing, as the Court erroneously stated.

The Legislature¹ agrees with this Court that, whenever possible, the three independent branches of government should act cooperatively and serve the best interests of the State’s citizens. Some members of the Judicial Branch have certainly acted in this spirit by informing the Governor and the Legislature of Justice Sullivan’s conduct, and thus far by the expressed intention of three Justices to cooperate with the Committee’s hearing. The Legislature, too, has acted cooperatively in negotiating, over a period of weeks, with the Judicial Branch as to the questions and subjects to be covered at the hearing. Such mutual cooperation should be commended and supported, not undermined, enabling the Legislature to secure necessary information from a single jurist, who through his own conduct and personal interests has

¹ The defendants are Senator Andrew J. McDonald and Representative Michael P. Lawlor, who are co-chairs of the Judiciary Committee of the Legislature and are acting herein pursuant to the authority of the Legislature. Hereinafter the defendants are referred to as the “Legislature.”

improperly interfered with the Legislature's constitutional appointment power, and who has refused to cooperate with the Legislature in its inquiry into his actions.

The Court's decision in this case actually undermines the spirit of cooperation so critical to harmonious inter-branch relations. Specifically, the Court has granted Justice Sullivan categorical immunity, in the absence of an impeachment inquiry or pending appointment, from responding to a legitimate legislative inquiry into his misuse of his office. Its result is to leave the Legislature to choose between abandoning any attempts to secure testimony from Justice Sullivan -- the best witness concerning his own conduct -- and initiating formal removal or impeachment proceedings to obtain such testimony. Such constitutional brinksmanship powerfully promotes **disharmony and confrontation** among the branches, and undermines the Legislature's constitutional prerogative to review Justice Sullivan's conduct to determine if more extreme measures -- such as removal or impeachment -- are justified.

The Legislature will not intrude on the core function of the Judicial Branch -- its power to render decisions -- or seek any information related to the Court's deliberative process. Its inquiry is limited to determining through sworn testimony all of the facts concerning Justice Sullivan's decision to withhold the decision in Clerk of the Superior Court v. Freedom of Information Commission, 278 Conn. 29 (2006), for his own, personal reasons, apparently unknown to the other members of the Court. The Legislature does not seek broad and sweeping power to subpoena judges on a whim to discuss their decision-making power. Rather it seeks a narrow rule, allowing it to issue a subpoena to investigate abuses of power that intrude on its core constitutional functions.

Accordingly, as discussed below, this Court should reconsider and reverse its ruling granting the plaintiffs' motion to quash and motion for a temporary injunction.

STATEMENT OF THE FACTS

A separation of powers violation has already occurred in the State of Connecticut – as there can be no doubt. Contrary to the Court's ruling, the violation is not an intrusion by the Legislature into the judicial sphere. It is the reverse -- an intrusion and interference by the Judicial Branch into legislative authority. This improper incursion is clear from the legislative record, and from the record before this Court and the public record.

Specifically, the plaintiff, Justice William Sullivan, purposefully delayed the release of the Court's decision in Clerk of the Superior Court v. Freedom of Information Commission, 278 Conn. 29 (2006), to assist the nomination and appointment of Justice Peter Zarella as Chief Justice of the Supreme Court. By this action he sought to interfere with and usurp the Legislature's exclusive power to appoint judges. As explained herein, the Legislature's actions, including its issuance of a subpoena to Justice Sullivan, are a necessary and appropriate response to an unlawful incursion into its constitutional appointment authority. Before discussing in detail the events leading to the present dispute, it is important first to identify the powers and duties the Legislature seeks to vindicate and preserve by issuing its subpoena to Justice Sullivan, as well as the facts of record.

A. The Legislature's powers and authority with regard to judicial appointments, discipline and removal of judges and judicial procedures.

Our state constitution vests the Legislature with a number of powers, independent of the Judiciary, designed in part to check the Judiciary. The core constitutional power implicated in this matter is the Legislature's exclusive authority to appoint judges and to enact laws governing the appointment process. Article Fifth, § 2 of the Connecticut Constitution provides in relevant part that "Judges of all courts . . . shall be nominated by the governor [and] . . . shall be appointed by the general assembly in such manner as shall by law be prescribed." Conn. Const., Art. V, § 2. This is the power Justice Sullivan interfered with and the Legislature seeks to vindicate through its investigation. In contrast to the Legislature's authority in this arena, neither the Judicial Branch as a whole, nor the Supreme Court or the Chief Justice, has any authority concerning the appointment of judges, and certainly has no constitutional or statutory power to withhold from the legislature judicial decisions or other public information of relevance to judicial appointments.

The Legislature also has the authority to discipline and remove judges. In particular, the Legislature possesses exclusive authority to impeach judges; see Conn. Const. Art. V, § 2, and Art. IX; and to legislatively remove judges upon the address of two thirds of each house to the Governor. See Conn. Const. Art. V. In addition, the Legislature possesses broad constitutional authority to enact laws governing the powers and jurisdiction of all Courts, including those of the Supreme Court. See Conn. Const. Art. V, § 1 ("The judicial power of the state shall be vested in a supreme court, an appellate court, and such lower courts as the general assembly shall, from

time to time, ordain and establish. The powers and jurisdiction of these courts shall be defined by law.”(emphasis added)

The Legislature exercises its constitutional authority over the Judicial Branch primarily through power delegated by the whole of the Legislative Branch to its Judiciary Committee, a joint legislative committee of which Senator McDonald and Representative Lawlor are co-chairs. This Committee exercises broad legislative authority with regard to, inter alia, all matters relating to courts, judicial procedures, the Judicial Department and all judicial nominations. In particular, the Joint Rules of the House and Senate grant the Judiciary Committee cognizance over the following matters:

(6) A committee on JUDICIARY which shall have cognizance of all matters relating to courts, judicial procedures, criminal law, probate courts, probation, parole, wills, estates, adoption, divorce, bankruptcy, escheat, law libraries, deeds, mortgages, conveyancing, preservation of land records and other public documents, the law of business organizations, uniform laws, validations, authorizations to sue and to appeal, claims against the state, all judicial nominations, all nominations of workers' compensation commissioners, and all matters relating to the Judicial Department, the Department of Correction and to the commission on Human Rights and Opportunities; all bills carrying civil penalties which exceed the sum of, or which may exceed in the aggregate, five thousand dollars; and all bills carrying criminal penalties, other than infractions, favorably reported by any other committee shall be referred to said committee, provided the committee's consideration shall be limited to the criminal penalties established in such bills and shall not extend to their substantive provisions or purpose.

Joint Rules of the Senate and House of Representatives, 2005-2006 Session, Rule 3(b)(6)(available at <http://www.cga.ct.gov/gae>)(capitals in original; emphasis added)

As a general matter, the Judiciary is the committee with cognizance over all statutes concerning, inter alia, the following subjects relevant to the present matter:

- Nomination and appointment of judges to all state courts, including the Supreme Court (see Conn. Gen. Stat. §§ 2-40, 2-42, and 2-43);
- Appointment of the Chief Justice of the Supreme Court (see Conn. Gen. Stat. § 2-40);
- Removal, suspension or censure of Supreme Court Justices (see Chapter 872a of the General Statutes);
- The Supreme Court's jurisdiction, personnel and procedures (see Chapter 883 of the General Statutes);
- The reporting of judicial decisions, including decisions of the Supreme Court (Chapter 883a).

With regard to the appointment of judges, and consistent with the constitutional allocation of powers, the Legislature has required in Section 2-40(a) of the General Statutes that “[e]ach nomination made by the Governor to the General Assembly for the Chief Justice or a judge of the Supreme Court, Appellate Court or Superior Court shall be referred, without debate, to the committee on the Judiciary[.]” Conn. Gen. Stat. § 2-40(a).

Not only does the Judiciary Committee have broad powers relative to the subjects at issue in its present investigation, it has the power to investigate those subjects by subpoena. Article Third, § 13 of the Connecticut constitution grants each house of the Legislature “all . . . powers necessary for a branch of the legislature of a free and independent state.” Conn. Const. Art. III, § 13. In furtherance of this Article, § 2-46(a) provides, in relevant part: “the Chairman of the whole, or of any committee of either house, of the General Assembly, . . . shall have the power to compel the attendance and testimony of witnesses by subpoena or *capias* issued by any of

them, require the production of any necessary books, papers or other documents and administer oaths to witnesses in any case under their examination[.]” Conn. Gen. Stat. § 2-46(a); see Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540, 564 (2004)(“an investigative power, encompassing the subpoenaing of persons and documents and the taking of testimony under oath, is a necessary and proper authority implicitly conferred by our state constitution in granting the legislature power over impeachments.”). See also §§ 2-1c; 2-48.²

The United States Supreme Court has forcefully affirmed that legislative powers include the right to investigate by subpoena:

the power to investigate is inherent in the power to make laws because a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change. Issuance of subpoenas such as the one in question here has long been held to be a

² Section 2-1c of the General Statutes provides as follows:

Either house of the General Assembly may determine by majority vote that a person is guilty of contempt of the General Assembly, after a hearing before an appropriate committee appointed by the presiding officer at which the person shall be entitled to give evidence and be represented by counsel. Said house may refer such matter to the Chief State's Attorney. Contempt of the General Assembly shall be punishable by a fine of not more than one hundred dollars or imprisonment for not more than six months or both.

Section 2-48 of the General Statutes provides as follows:

Whenever a witness summoned fails to testify and the fact is reported to either house, the president of the Senate or the speaker of the House, as the case may be, shall certify to the fact under the seal of the state to the state's attorney for the judicial district of Hartford, who shall prosecute therefor.

legitimate use by Congress of its power to investigate. Where the legislative body does not itself possess the requisite information – which frequently is true – recourse must be made to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed . . .

Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504-06 (1975).

B. Justice Sullivan's intrusion into the appointment process and the Legislature's investigation in response thereto.

On March 14, 2006, the panel members in the Supreme Court case of Clerk of the Superior Court v. Freedom of Information Commission approved for release the majority, concurring and dissenting opinions in the case. Justice Sullivan authored the majority opinion, which concluded that certain Judicial Branch records were not subject to disclosure under the Freedom of Information Act, Conn. Gen. Stat. § 1-200 et seq. See Clerk of the Superior Court v. Freedom of Information, 278 Conn. 29 (2006). Justice Zarella joined Justice Sullivan's opinion. Having been approved by the panel members, the opinions were referred to the Office of the Reporter of Judicial Decisions for routine review on matters of form. For reasons discussed below, however, the decisions in Clerk of the Superior Court would not be released to the public until April 21, 2006.

In a letter dated March 15, 2006, (one day after panel approval in Clerk), Justice Sullivan formally informed Governor Rell that he intended to retire. See Sullivan letter to Rell, March 15, 2006 (attached hereto as Exhibit 7). Two days later, on March 17, 2006, Governor Rell publicly announced Justice Sullivan's retirement as Chief Justice, effective April 15, 2006,

and simultaneously announced her nomination of Associate Justice Peter Zarella as Chief Justice. See Press Release, "Governor Rell Announces Retirement of Chief Justice Sullivan; Nominates Associate Justice Zarella to Succeed Him," March 17, 2006 (attached hereto as Exhibit 8).

On March 20, 2006, in an effort to ensure the level of consideration necessary for the appointment of the head of a co-equal branch of government, Senator McDonald and Representative Lawlor asked the Governor to delay Justice Zarella's nomination until after the end of the legislative session. See McDonald and Lawlor Letter to Rell, March 20, 2006 (attached hereto as Exhibit 1). The Governor denied that request. See Rell letter to McDonald and Lawlor, March 24, 2006 (attached hereto as Exhibit 2). Subsequently, on March 28, 2006, Senator McDonald and Representative Lawlor asked Justice Sullivan to defer his retirement until January 1, 2007. See McDonald and Lawlor letter to Justice Sullivan, March 28, 2006 (attached hereto as Exhibit 3). Justice Sullivan rejected this request, stating in reply only that delaying his retirement was "not possible." See Sullivan letter to McDonald and Lawlor, March 28, 2004 (attached hereto as Exhibit 4). On April 15, 2006, Justice Sullivan's retirement became effective, and Justice David Borden, as the Court's most senior Associate Justice, assumed the power and authority to exercise the duties of Chief Justice, pursuant to Conn. Gen. Stat. § 51-3.

On April 24, 2006, without any prompting or solicitation from the Legislature, Justice Borden wrote to Senator McDonald and Representative Lawlor, informing them of "information concerning the handling of a case in this [the Supreme] court that may affect a pending executive and legislative matter, the nomination of Justice Peter I. Zarella as Chief Justice of this court."

See Borden Letter to McDonald and Lawlor, April 24, 2006 (Record, Exhibit D) at 1. According to Justice Borden's letter:

Chief Justice Sullivan improperly delayed the release of this court's decision in the case of Clerk of the Superior Court, Geographical Area Number 7, et al. v Freedom of Information Commission, for the purpose of aiding that appointment. The intent and effect of Chief Justice Sullivan's conduct was to deprive the legislature of the timely knowledge of Justice Zarella's vote in that case.

Id. at 1. Justice Borden provided certain details regarding Justice Sullivan's conduct, including his personal instruction to the Office of the Reporter of Judicial Decisions to hold release of the Clerk of the Superior Court decision until further notice from him. Id. at 2. The letter further stated that Justice Sullivan had orally acknowledged to both Justice Borden and Associate Justice Palmer that he had placed a "hold" on the decision for the specific purpose of aiding Justice Zarella's then-pending nomination as Chief Justice, presumably because Justice Zarella's vote in support of the majority in that case would be of special interest at his confirmation hearings because of other recent controversies involving sealed judicial records. Id. at 2, 3.

Justice Sullivan has never denied his conduct as related in Justice Borden's letter, nor that his conduct was intended to, and did, interfere with the Legislature's constitutional duty to consider Justice Zarella's appointment as Chief Justice. In fact, in an April 24, 2006 letter to the litigants in the Clerk of the Superior Court matter, Justice Sullivan explained that he was setting forth the allegations against him and that "for the purposes of this letter [readers were to] accept them as true." Letter of Sullivan to Counsel in Clerk of Superior Court, April 24, 2006 (attached hereto as Exhibit 5). Then, referring to himself in the third person, he stated, "Justice Sullivan

acknowledged that he had placed the case on hold and that he had done so for the purpose of ensuring that the case would not be published prior to the Judiciary Committee hearing relating to the recent nomination of Justice Peter T. Zarella to the position of chief justice.” Id., p. 2.

On April 24, 2006, after the revelations of Justice Borden’s letter to the Judiciary Committee’s co-chairs had become public, the Judiciary Committee voted 17-1, with 17 abstentions, to approve Justice Zarella’s nomination. On the evening of April 24, 2006, Justice Zarella asked Governor Rell to withdraw his nomination. The legislative session ended on May 3, 2006, without the nomination being further considered by the General Assembly.

No public hearing was ever held on Justice Zarella’s nomination. Nor, at any point, did Justice Sullivan testify before the Legislature or any of its committees concerning his conduct relative to the release of the decision in Clerk of the Superior Court or provide the legislature a written explanation for his conduct.

In light of the many unanswered questions concerning the apparent and unprecedented incursion into its authority reported to it by Justice Borden, the Judiciary Committee scheduled an Investigative Hearing for June 27, 2006.³ The Governor has not made another nomination to the office of Chief Justice, stating publicly that she is “waiting to see what the [Judiciary] committee learns during its hearing” before making a decision regarding the current vacancy. See Lawmakers Negotiating With Supreme Court For Upcoming Hearings, Hartford Courant, June 15, 2006 (attached hereto as Exhibit 6)

³ The plaintiffs and the Court incorrectly refer to the hearing as an “Informational Hearing.” See Memorandum of Decision pp. 4, 14; Tr. at 60. In fact, however, the subpoena made clear that it was an “Investigative Hearing.” (Record, Ex. A).

In requesting that certain Justices testify at the hearing, Senator McDonald and Representative Lawlor made clear that any Justice could object to, and decline to answer, any question that intruded into the Court's deliberative process. Justices Borden, Palmer and Zarella accepted the Judiciary Committee's invitation to attend and testify without the necessity of subpoenas. Justice Sullivan, however, refused the Committee's invitation. On June 21, 2006, after the failure of negotiations through intermediaries to procure his voluntary attendance and testimony, the Judiciary Committee was forced to subpoena Justice Sullivan to appear before the Committee on June 27, 2006.

The subpoena instructed Justice Sullivan to appear before an Investigative Hearing of the Judiciary Committee to "give testimony on what you know regarding the investigation before said Committee concerning the facts and circumstances surrounding your actions, as former Chief Justice of the Connecticut Supreme Court, in delaying the release of Clerk of the Superior Court v. Freedom of Information Commission, 278 Conn. 28, 2006, and current Supreme Court practices." See Subpoena, June 21, 2006 (Record, Exhibit A).

On Friday, June 23, 2006, Justice Sullivan responded to the subpoena by filing an ex parte motion for temporary injunction and motion to quash the subpoena, without notice or hearing. He did not inform the defendants or their counsel, the Attorney General, of the filing, and the Attorney General only obtained the relevant papers by calling the clerk's office. The defendants were not served until the following day, Saturday, June 24, 2006. This Court denied the request for ex parte relief and scheduled a hearing for 9:00 a.m. on Monday, June 26, 2006. On the morning of the hearing, the Judicial Branch moved to intervene as a plaintiff in support of

Justice Sullivan's motion to quash. This Court granted the motion, and Justice Sullivan and the Judicial Branch filed briefs. This Court acknowledged that the Attorney General had not had time to respond to the plaintiffs' briefs and agreed to honor his request that any orders entered on the day of the hearing be temporary in order to afford him an opportunity to respond.

After hearing argument, this Court issued an oral ruling granting a temporary injunction and quashing the Judiciary Committee's subpoena. This Court did so notwithstanding the fact that the standard for granting a temporary injunction against the government is strict. "Generally, suits for injunctions against governmental action can proceed only if it is clear that under no circumstances could the government ultimately prevail on the merits of its claim and there is some independent basis for jurisdiction; the burden on the one seeking the injunction is heavy." 42 Am. Jur. 2d, Injunctions, § 160, p. 749. "[C]ourts will act with extreme caution where the granting of injunctive relief will result in embarrassment to the operations of government." Connecticut Employees Union "Independent" Inc. v. Conn. State Employees Assn., 183 Conn. 235, 248 (1981). The Connecticut Supreme Court has made clear that "trial courts can avoid undue interference with governmental functions by tailoring injunctive relief and scrupulously weighing the equities." Sentner v. Board of Trustees, 184 Conn. 339, 344 (1981).

Despite the strict standard for issuance of a temporary injunction against the government, this Court issued a written ruling on June 30, 2006, granting the requested temporary injunction in extremely broad terms. Instead of narrowly tailoring the injunction to bar only those questions that would actually infringe on areas within the exclusive control of the Judiciary, such as questions concerning the Court's deliberative process, this Court crafted a broad order "barring

any further requisite attendance on the part of Justice Sullivan at the hearing scheduled for June 27 and thereafter.” Memorandum of Decision, p. 15-16 (emphasis added).

The Court’s decision also failed to apply the standard applied by the Connecticut Supreme Court for identifying separation of powers violations, misconstrued the focus of the Legislature’s subpoena, mischaracterized the judicial infringement of legislative authority at issue; and erroneously distinguished Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540 (2004). Accordingly, the Legislature has filed the present motion for reargument and reconsideration.

ARGUMENT

I. THIS COURT ERRONEOUSLY CONCLUDED THAT THE LEGISLATURE’S ISSUANCE OF A SUBPOENA TO JUSTICE SULLIVAN, UNDER THE UNIQUE CIRCUMSTANCES OF THIS CASE, VIOLATED THE SEPARATION OF POWERS CLAUSE WHEN, IN FACT, JUSTICE SULLIVAN’S OWN SEPARATION OF POWERS VIOLATION PLAINLY JUSTIFIES AND COMPELS THE INQUIRY AND THE SUBPOENA.

The emotion-laden argument made by counsel for the Judicial Branch – that the defendants had advanced the “completely wrong” legal framework -- generated much more heat than light, and regrettably diverted the Court from a correct analysis and result. The Court granted the plaintiff’s motion to quash because it concluded that the Legislature’s issuance of a subpoena to a judicial officer, in the absence of an impeachment inquiry, or a pending judicial

appointment,⁴ violated the separation of powers clause by intruding on the powers of the judiciary. See Transcript of the Court's Ruling, hereinafter "Tr.," p. 12 (June 26, 2006).

In so ruling, however, this Court fundamentally erred in both its analysis of the law and its characterization of the facts at hand. Specifically, this Court (1) failed to apply the test that the Connecticut Supreme Court applies to alleged separation of powers violations; (2) misconstrued the focus of the Legislature's subpoena; (3) mischaracterized and substantially overlooked the judicial infringement of legislative authority at issue; and (4) erroneously distinguished Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540 (2004), when in fact that case fully supports the constitutionality of the present subpoena. The Court's conclusion unnecessarily pushes the branches closer to a more drastic constitutional showdown in the form of a removal or impeachment proceeding.

A proper analysis of the law and an accurate application to the facts compels the conclusion that the Legislature's subpoena does not violate the separation of powers doctrine, and therefore this Court should reconsider and vacate its ruling granting the motion to quash

A. This Court Failed To Apply The Test That The Connecticut Supreme Court Uses To Identify Separation Of Powers Violations.

In analyzing the plaintiffs' claim, this Court looked to Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540 (2004), for guidance, found that it was fundamentally

⁴ Specifically, this Court held that "the legislature may not subpoena a judicial official to give testimony relating to his official duties or the performance of judicial functions, except where the Constitution expressly contemplates such a direct legislative encroachment into judicial affairs. This is certainly true in the impeachment process. Attorney General Blumenthal has argued that the subpoena issued in this matter is pursuant to the appointment process. However, there is no appointment pending at the present time." Memorandum of Decision, p. 13.

distinguishable from the present situation because it involved impeachment, and then concluded that there was a separation of powers violation -- without ever considering the test that the Connecticut Supreme Court applies to identify separation of powers violations.⁵ Applying the proper test to a proper understanding of the facts compels the conclusion that the Legislature's subpoena does not violate the separation of powers.⁶

⁵ While the plaintiffs challenge the Judiciary Committee's effort to compel Justice Sullivan's testimony as a violation of separation of powers, they do not and cannot dispute that the Judiciary Committee's underlying inquiry is a legitimate subject of legislative investigation. Nor can they dispute that the Legislature's right to pursue this inquiry is generally protected by the Speech or Debate Clause of our Constitution, Conn. Const., art. III, § 15. As articulated by our Supreme Court, the Speech or Debate Clause immunizes legislative subpoenas from judicial scrutiny if the Legislature's inquiry falls "within the sphere of legitimate legislative activity." Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540, 563 (2004). The Judiciary Committee's investigation easily meets this standard. The Supreme Court in Office of the Governor also concluded, however, that "the immunity conferred by the speech or debate clause . . . does not extend to a colorable claim, brought in good faith, that the legislature has conducted itself in violation of the principle of the separation of powers[.]" *Id.* at 564. As discussed herein, plaintiffs' separation of powers claim, while fundamentally flawed, is at least "colorable" and brought in good faith. For that reason, defendants do not dispute the Court's subject matter jurisdiction to adjudicate plaintiffs' separation of powers claim. This is not to say, however, that the Supreme Court's decision in Office of the Governor somehow supports plaintiffs' separation of powers claim. Quite the contrary, as discussed below, that decision -- and, particularly, its exception to speech or debate immunity for colorable, good faith separation of powers claims -- actually supports the Legislature's right to investigate by subpoena Justice Sullivan's effort to interfere with its exclusive appointment authority in violation of the separation of powers doctrine.

⁶ Counsel for the Judicial Branch urged this Court to hold that a legislative subpoena issued to a judicial officer violates the Separation of Powers doctrine *except* when an impeachment inquiry has begun. This is not a standard or a legal framework. Rather it is an **example** of when a legislative subpoena does **not** violate the Separation of Powers doctrine. In fact, counsel for the Judicial Branch quickly waffled on this position when challenged and was forced to concede that there might be other legitimate spheres of legislative inquiry that would overcome a separation of powers challenge. (Tr. pp. 44-48).

There is no dispute that the separation of powers “is one of the fundamental principles of the American and Connecticut Constitutional systems.” Stolberg v. Caldwell, 175 Conn. 586, 598 (1978), appeal dismissed sub. nom. Stolberg v. Davidson, 454 U.S. 958 (1981). Although it is implicit in the text of the federal Constitution, see Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 945 (1983), it is explicit in Article Second of the Connecticut constitution, which states that “[t]he powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.” Connecticut Constitution, Article Second.

“[I]he primary purpose of [the separation of powers] doctrine is to prevent commingling of different powers of government in the same hands” Massameno v. Statewide Grievance Committee, 234 Conn. 539, 551 (1995); see also Nixon v. Fitzgerald, 457 U.S. 731, 760-61 (1982)(Burger, C.J., concurring)(“[t]he essential purpose of the separation of powers is to allow for independent functioning of each coequal branch of government within its assigned sphere of responsibility, free from risk of control, interference, or intimidation by other branches”). “The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch’s independence and performance of assigned powers.” Massameno, 234 Conn. at 551-552. “It is axiomatic that no branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise thereof.” Id. at 552; Kinsella v. Jaekle, 192 Conn. 704, 723 (1984). Thus, “[t]he

separation of powers doctrine serves a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power ” Massameno, 234 Conn. at 552.

This Court’s citation of State v. Clemente and Stolberg v. Caldwell, -- and cases decided even earlier -- as separation of powers precedents ignores several decades of the law’s development on this topic. See, e.g., W. Horton & J. Reed, "Seven Angry Men," 32 Conn. L. Rev. 1577, 1592 & 1607 (Summer 2000)("Clemente is not particularly well thought of today")("[w]hile Clemente still stands, no wise litigant today would rely on it"); R. Miller, "Creating Evidentiary Privileges: An Argument for the Judicial Approach," 31 Conn. L. Rev. 771, 802 n 177 (Winter 1999)("in State v. James, 560 A 2d 426 (Conn. 1989), the court appeared to retreat from Clemente's apparent broad assertion of the court's powers"); The Honorable Ellen A. Peters, William B. Lockhart Lecture: "Getting Away from the Federal Paradigm: Separation of Powers in State Courts," 81 Minn. L. Rev. 1543, 1554 n. 50 (1997).⁷

In analyzing separation of powers claims, the Connecticut Supreme Court has more recently and repeatedly warned that “[the separation of powers clause] cannot be rigidly applied always to render mutually exclusive the roles of each branch of government.” Massameno, 234 Conn. at 552. According to the Court:

[T]he great functions of government are not divided in any such way that all acts of the nature of the function of one department can never be exercised by another department; such a division is impracticable, and if carried out would result in the paralysis of government. Executive, legislative and judicial powers, of

⁷ This latter article was authored by the Honorable Ellen A. Peters, who, at the time, was a Senior Justice of the Connecticut Supreme Court and had formerly served as Chief Justice.

necessity overlap each other, and cover many acts which are in their nature common to more than one department.

Id. at 552; Seymour, 255 Conn. at 107; In re Clark, 65 Conn. 17, 38 (1894).

Given the overlapping nature of the branches' powers, it is well settled that "in deciding whether one branch's actions violate the constitutional mandate of the separation of powers doctrine, the court will consider if the actions constitute: (1) an assumption of power that lies exclusively under the control of another branch; or (2) a significant interference with the orderly conduct of the essential functions of another branch." Seymour v. Elections Enforcement Commission, 255 Conn. 78, 107 (2000)(emphasis added); Massameno v. Statewide Grievance Committee, 234 Conn. 539, 552-553 (1995).

Applying this test, the Connecticut Supreme Court has rejected numerous separation of powers challenges to legislative conduct that allegedly encroached on the powers of the judiciary. See, e.g. State v. Campbell, 224 Conn. 168 (1992), cert. denied, 508 U.S. 919 (1993)(judiciary does not have exclusive control over sentencing and therefore statute requiring trial court to follow recommendation of state forensic institute did not violate separation of powers); Bartholomew v. Schweitzer, 217 Conn. 671 (1991)(statute governing closing arguments does not violate separation of powers clause because it does not assume an exclusively judicial power or interfere with the court's judicial functions); State v. James, 211 Conn. 555 (1989)(rules of evidence do not lie exclusively within the control of the judiciary and therefore statute governing testimony of child sexual assault victims did not violate separation of powers). In each case, the Court held that the exercise of the power at issue did not fall within

the exclusive control of the Judicial Branch or significantly interfere with the essential functions of the judiciary.

This, therefore, is the separation of powers inquiry: In the context of this case, does the legislative subpoena violate the separation of powers doctrine because it falls within the exclusive control of the Judicial Branch or significantly interferes with essential functions of the judiciary? In addressing this question, the Court must presume, as it always does when addressing a constitutional challenge to legislative action, that the Legislature intends to act constitutionally. See Kinsella, 192 Conn. at 729 (“we must presume that the members of the General Assembly will carry out their duties with scrupulous attention to the laws under which they serve”); Office of the Governor, 271 Conn. at 554 (“[w]e refused [in Kinsella] to speculate that the legislature would conduct itself in a manner inconsistent with constitutional precepts”); Fonfara v. Reapportionment Commission, 222 Conn. 166, 177 (1992) (“public officers, acting in their official capacities, are presumed, until the contrary appears, to have acted legally and properly”). The plaintiffs have the burden in this case, no less than in any case, to demonstrate that the legislative action is unconstitutional as violating the separation of powers “beyond a reasonable doubt,” which means that the plaintiffs must show that under any set of facts or circumstances of record, the legislative action would be unlawful. River Bend Associates, Inc. v. Zoning Commission, 271 Conn. 1, 25 n.14 (2004).

1. The Subpoena Does Not Violate The First Prong Of The Separation Of Powers Inquiry Because It Does Not Encroach Upon A Power That Lies Exclusively Under The Control Of The Judiciary.

In the present case, the Legislature's subpoena does not violate the first prong of the separation of powers inquiry because it in no way assumes or otherwise encroaches upon a power that lies exclusively under the judiciary's control. To the contrary, the subpoena seeks information directly relevant to powers that are exclusively legislative, including, in particular, the power of judicial appointment.

a. The Subpoena Arises Out Of, And Vindicates, The Legislature's Exclusive Powers, Including Its Power Of Judicial Appointment.

As Justice Borden has reported, Justice Sullivan's attempt to delay the release of the Supreme Court's decision in Clerk of the Superior Court was for the sole purpose of influencing the appointment of his successor. In so doing, Justice Sullivan interfered with the Legislature's exclusive authority, granted by Article Fifth, § 2 of the Connecticut Constitution, to appoint "Judges of all courts." Conn. Const., Art. V, § 2. The appointment power that Justice Sullivan sought to impede has been entrusted by the whole of the Legislature to the Judiciary Committee, whose subpoena Justice Sullivan now seeks to defy. See Conn. Gen. Stat. 2-40(a)("[e]ach nomination made by the Governor to the General Assembly for the Chief Justice or a judge of the Supreme Court, Appellate Court or Superior Court shall be referred, without debate, to the committee on the Judiciary[.]") Because the subpoena arises out of, and seeks to vindicate, the Legislature's exclusive appointment authority, the Court was wrong to conclude that it interferes with judicial authority.

The fact that no appointment to the position of Chief Justice is currently pending is utterly irrelevant. There exists a vacancy in the position, which must and may only be filled upon action by the Judiciary Committee. The Legislature, as it is entitled to do, has determined that questions concerning the conduct of Justice Sullivan are relevant to the appointment of the next Chief Justice. Even if this specific vacancy had already been filled, this inquiry would still be justified. This episode raises significant questions about the proper role of the Chief Justice in relation to the Legislature, which are clearly relevant to any future nomination for Chief Justice. The Legislature must understand the nature and extent of Justice Sullivan's effort to corrupt the nomination process in order to protect future appointment proceedings from similar efforts. For example, information obtained through the subpoena will likely aid in the development of appropriate procedural and/or legislative measures to ensure the Legislature's access to all public information relevant to nominations. It is noteworthy that Governor Rell has stated publicly that she is "waiting to see what the [Judiciary] committee learns during its hearing" before making a decision regarding the current vacancy. See Lawmakers Negotiating With Supreme Court For Upcoming Hearings, Hartford Courant, June 15, 2006 (attached hereto as Exhibit 6).

The Judicial Branch has argued to this Court that the public record contains all that the Legislature needs to know with regard to Justice Sullivan's conduct. This contention is clearly not the case. First, to the extent Justice Sullivan has acknowledged his misconduct, he has not done so under oath or subject to questioning by the Legislature. The testimony of witnesses with necessarily limited, second-hand knowledge of the relevant facts, while helpful, is inadequate. Second, even accepting the public record as true, there remain many significant and unanswered

questions concerning the details and scope of Justice Sullivan's efforts to manipulate the appointment of Justice Zarella, including whether it extended to withholding release of other decisions or involved other misuses of authority. Indeed, the Legislature has the right to question Justice Sullivan on whether his interference with the Legislature's appointment authority extended to other appointments or was undertaken with the participation of others. What is known to date of Justice Sullivan's conduct simply raises more questions than it answers, and it is incumbent on the Legislature to answer those questions in order to properly administer its appointment authority and to preserve that authority as an effective check on the Judiciary.

As argued throughout this brief, the Legislature is not undertaking a fishing expedition or advocating an unrestricted right to subpoena judges at its whim. Rather, the extraordinary events contained in the public record so far -- documenting actions by a sitting Chief Justice to intrude into the proper exercise of the legislature's constitutionally exclusive appointment power -- create more than reasonable cause for the Legislature to conclude that it has been the victim of a separation of powers violation, and it is now entitled to learn the full extent and effect of that violation.

For these reasons, the Legislature has concluded that it cannot make a fully informed judgment on a future nomination for Chief Justice until it first understands what occurred with respect to the last nomination. The Court may not and should not substitute its judgment for that of the Legislature in determining how or when the Legislature may seek information necessary for the proper exercise of that power. Indeed, any effort to do so would represent another improper Judicial assault on legislative independence.

As the United States Supreme Court has recognized, a legislature cannot act "wisely or effectively in the absence of information respecting the conditions which [its action are] intended to affect or change.... Where the legislative body does not itself possess the requisite information – which frequently is true – recourse must be made to others who do possess it." Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504-06 (1975).

Here, the subpoena to Justice Sullivan must be viewed, not as an incursion into judicial powers, but as a necessary and appropriate tool to permit the Legislature to wisely and effectively exercise its exclusive appointment authority.

b. The Legislature's Subpoena Does Not Encroach On Any Power Exclusively Under The Control Of The Judiciary.

The Legislature's subpoena does not in any way encroach upon a power that is exclusively judicial. This Court missed this point when it incorrectly equated the Legislature's subpoena with an inquiry into the Judiciary's deliberative process. Specifically, this Court reasoned that if judges could be compelled "to give testimony concerning *their judicial decisions and proceedings*," the independence of the judicial branch would be compromised and judges would be inhibited from discharging their constitutional duties (Memorandum of Decision "MOD," p. 13; Tr. p. 11; emphasis added). In support of this concern, this Court referenced Statement of the Judges, 14 F.R.D. 335 (N.D. Calif. 1953), in which District Court Judge Goodman from the Northern District of California refused to testify before a House Subcommittee and instead submitted a statement from his colleagues stating that, based on the

separation of powers doctrine, no judge could “testify with respect to any Judicial proceedings.”
Id.

As Senator McDonald and Representative Lawlor expressly assured Justice Sullivan through intermediaries, however, and the Attorney General reiterated to this Court, the Legislature has no intention whatsoever of inquiring into the court’s deliberative process, or any of its judicial proceedings or decisions, including its reasons for deciding Clerk of the Superior Court as it did. Instead, the Legislature wants to question Justice Sullivan on the specific circumstances surrounding his delay in releasing Clerk of the Superior Court for the specific purpose of furthering Justice Zarella’s appointment and thereby interfering with the Legislature’s exclusive constitutional power of appointment. In essence, Justice Sullivan has engaged in conduct that has intruded into and compromised the Legislature’s authority to appoint the next Chief Justice and has resulted in the Governor’s withdrawal of Justice Zarella’s nomination. The Governor has yet to make another nomination and has indicated that she will not do so until the legislative investigation of the situation is concluded. Under these circumstances, a purely factual and narrow inquiry into Justice Sullivan’s extrajudicial conduct is necessary to determine exactly what happened and how the legislature’s appointment process was undermined.

That such an inquiry poses none of the risks of intimidation and abuse associated with inquiries into the court’s deliberative process, and does not pose a separation of powers concern, is supported by Statement of the Judges 14 F.R.D. 335 (N.D. Calif. 1953), on which the trial court relied. Although the judges in that case objected on separation of powers grounds to a legislative subcommittee subpoenaing Judge Goodman to testify about judicial proceedings, **they**

expressly stated that they did “not object to Judge Goodman appearing before [the Committee] to make any statement or to answer any proper inquiries on matters other than Judicial proceedings.” *Id.* at 336 (emphasis added) Had such testimony into matters other than judicial proceedings posed a separation of powers concern, the judges would surely have objected. In the present case, Senator McDonald and Representative Lawlor recognized this distinction and explicitly assured Justice Sullivan that he was free to object to, and decline to answer, any question that intruded into the Court’s deliberative process.

In short, the focus of the Legislature’s subpoena is not the Court’s deliberative process, but rather Justice Sullivan’s extrajudicial effort to conceal information from the Legislature in an attempt to aid the appointment of Justice Zarella as the next Chief Justice. Because the power that is at issue is the power to make judicial appointments, which is a purely legislative power, the subpoena in no way encroaches upon a power that lies exclusively under the control of the Judicial Branch.⁸

⁸ Even if the Supreme Court’s practices were the exclusive focus of the Judiciary Committee’s inquiry, which they are not, the subpoena would still be permissible because the Supreme Court’s relevant practices and procedures are not exclusively under the control of the Judiciary. To the contrary, as discussed in section I.A. above, and affirmed in the more recent separation of powers cases cited on page 21, the Legislature possesses broad constitutional authority to enact laws governing the powers and jurisdiction of all Courts, including the Supreme Court. Article Fifth, § 1 specifically provides that the “powers and jurisdictions of the courts shall be defined by law.” Indeed, the Legislature has enacted a variety of laws impacting on the very Supreme Court practices and procedures implicated in this matter, for example those collected in Chapter 883 of the General Statutes (concerning Supreme Court jurisdiction and procedures) and Chapter 883a (concerning the reporting of decisions by the Supreme Court and lower court decisions). The plaintiffs have not suggested that the Legislature could not pass legislation to prohibit the conduct reportedly undertaken by Justice Sullivan, nor that the attempt to do so would constitute the usurpation of an exclusively judicial power.

Furthermore, with regard to the issuance of the subpoena itself, there can be no question that the Legislature possesses broad powers of investigation. See Statement of Facts, section A, supra. Indeed, as this Court correctly concluded, “the legislature can issue a subpoena in connection with any proper legislative function or concerning any area in which it could appropriately legislate.” *Id.* p. 9, citing Conn. Op. Atty Gen 84-130 and McGrain v. Daugherty, 273 U.S. 135 (1927). Questions such as how the subpoena should be phrased, what the scope of the hearing will be, what the rules and procedures will be, and whether the inquiry is connected to a possible impeachment or removal, or an appointment inquiry, are all matters for the Legislature, not the Judiciary, to decide. See Nixon v. United States, 506 U.S. 224, 235 (1993). Indeed, for the Judicial Branch to attempt to determine these matters would raise additional separation of powers concerns.

In sum, far from assuming a power that lies exclusively under the control of the Judicial Branch, the Legislature’s issuance of a subpoena to investigate possible interference with its own exclusive judicial appointment power involves a power that is inherently and exclusively legislative. Accordingly, the subpoena does not violate the first prong of the separation of powers inquiry.

2. The Subpoena Does Not Violate The Second Prong Of The Separation Of Powers Inquiry Because It Does Not Constitute A Significant Interference With The Orderly Conduct Of The Judicial Branch’s Essential Functions.

The Legislature’s subpoena also does not violate the second prong of the separation of powers inquiry because it does not constitute “a significant interference with the orderly conduct

of the essential functions” of the judiciary. Seymour, 255 Conn. at 107. Specifically, the Legislature is not asking Justice Sullivan to do anything more than appear and give testimony on conduct that falls outside the scope of his judicial duties, and does not seek to inquire about Justice Sullivan’s or the Court’s deliberative process in issuing Clerk of the Superior Court.

Although this Court characterized the subpoena in this case as “a subpoena issued on a judicial officer *acting in the function of his duties*,” (Tr. p. 12; emphasis added), this characterization is patently incorrect. This case involves a Justice who intentionally undertook to delay the release of a judicial decision *for the sole purpose* of subverting the legislature’s full and complete exercise of its constitutional appointment authority in order to aid the appointment of another Justice as the next Chief Justice of the Connecticut Supreme Court. See Letter from Justice Borden to Senator McDonald, dated April 24, 2006 (Record, Exhibit D); Letter from Justice Sullivan to Counsel, dated April 24, 2006 (attached hereto as Exhibit 5). Apparently, Justice Sullivan believed that the Court’s decision in Clerk of the Superior Court v. Freedom of Information Commission, 278 Conn. 29 (2006), in which he and Justice Zarella were in the majority, might raise questions that could endanger Justice Zarella’s appointment. Seeking to avoid that possibility, Justice Sullivan placed a “hold” on the release of the decision so that it would not be released to the parties or the public until further notice from him, after the Legislature’s public hearing into the Zarella nomination had concluded.

As Justice Borden, Acting Chief Justice of the Court, has pointed out, placing a hold on a judicial decision under any circumstances is “very unusual.” (Record, Ex. D, p. 2). Clearly, if Justice Sullivan placed a hold on Clerk of the Superior Court for the sole purpose of obstructing

the Legislature's examination of the nomination of Justice Zarella to the position of Chief Justice, his conduct was not only very unusual, but also outside the scope of his judicial duties. Indeed, there can be no claim that Justice Sullivan's conduct was in furtherance of any proper judicial objective. To state it simply: In delaying the release of Clerk of the Superior Court, Justice Sullivan was acting not as a Judge, but rather as an advocate of Justice Zarella's nomination and appointment. His uninvited and unlawful trespass into the Legislature's exclusive appointment authority simply cannot be characterized as a judicial act. Justice Borden's report to the Legislature of Justice Sullivan's "improper[]" interference in a legislative matter is irreconcilable with the plaintiffs' present claim that the Legislature's inquiry into that intrusion is illegal and unwarranted. Since, as Justice Borden himself asserted, Justice Sullivan's actions improperly interfered with an exclusively legislative power, those actions simply could not have been exclusively judicial in nature.

In short, Justice Sullivan's conduct was not within the scope of his judicial duties, but rather constituted **a blatant attempt to interfere with and subvert an ongoing appointment hearing, an exclusively legislative power, which was itself a separation of powers violation.** Under the circumstances, requiring Justice Sullivan to testify concerning that conduct in no way constitutes a "significant interference with the orderly conduct of the essential functions" of the judiciary.

The plaintiffs' suggestion that allowing the Legislature to issue a subpoena under the circumstances of this case would permit the Legislature to subpoena judges anytime it wanted to is preposterous. It is only because there has been a judicial intrusion into the Legislature's

constitutional powers by the then-head of the Judicial Branch-- a circumstance that appears to be unprecedented, and hopefully will never be repeated -- that the Legislature is claiming the right to subpoena Justice Sullivan for the narrow purpose of inquiring into the circumstances of that intrusion

Not only is the subject matter of the inquiry not a significant inference with essential judicial functions, but the time required to testify is likewise not a substantial interference. In Office of the Governor v. Select Committee on Inquiry, 271 Conn. 540 (2004), the Connecticut Supreme Court explicitly rejected the argument that requiring the Governor to testify before a legislative committee would violate the separation of powers provision because it would “seriously cripple the proper and effective administration of public affairs as entrusted to the executive branch.” Id. at 597. According to the Court, the fact that the governor’s compliance with the subpoena could “impose certain burdens on the time and attention of the governor simply [was] insufficient to establish a violation of the separation of powers.” Id. at 597.

The same is true here. The mere fact that compliance with the subpoena may impose certain burdens on the time and attention of Justice Sullivan simply does not constitute a “significant interference” with the orderly conduct of the essential functions of the judiciary. Accordingly, under the well-established test applied by the Connecticut Supreme Court, which this Court did not employ here, the Legislature’s subpoena does not violate the separation of powers clause.

B. *Office Of The Governor Supports Conclusion That The Separation Of Powers Clause Cannot Be Used To Shield A Judge From Investigation Into His Own Separation Of Powers Violation.*

The conclusion that the Legislature's subpoena does not violate the separation of powers clause is further supported by the Connecticut Supreme Court's analysis in Office of the Governor v. Select Committee of Inquiry, 271 Conn. 540 (2004), concluding that it would be "constitutionally perverse" if the separation of powers doctrine could be used to shield an official from an investigation that was itself intended to protect the separation of powers. That is precisely the situation presented here

Office of the Governor addressed the question whether the Governor was categorically immune, by virtue of the separation of powers doctrine, from being subpoenaed to testify before a legislative committee charged with investigating his misconduct and recommending articles of impeachment to the House, if warranted. Id. at 547. In concluding that the Governor was not categorically immune, the Court focused on the fact that the Legislature's impeachment power furthers the separation of powers clause by serving as a constitutional check on abuse of executive authority. In other words, the fact that the Legislature can remove the Governor, and thereby prevent executive encroachment on the legislative branch, serves to protect the balance of powers. Given this fact, the Court concluded that "[i]t would be constitutionally peculiar if the legislature, engaged in the impeachment process in order to vindicate the separation of powers provision, were categorically barred by that very provision from securing the testimony of the person who, not only is the target of the impeachment process, but who undoubtedly is the best source of information regarding the alleged conduct that gave rise to the impeachment

process.” Id. at 580-581 (footnote omitted). According to the Court, “it would be constitutionally perverse to conclude that it would be a violation of the separation of powers doctrine for the legislature to discharge its constitutional responsibilities.” Id. at 586.

Those words apply with equal force here. Like the impeachment clause, the Legislature’s constitutional and statutory power and responsibility to appoint the Chief Justice of the Connecticut Supreme Court furthers the separation of powers doctrine by serving as a check on the power of the Judicial Branch. As in Office of the Governor, it would be “constitutionally peculiar” and the height of irony if the Legislature -- engaged in an inquiry into an apparent gross attempt by the outgoing Chief Justice to subvert the process of appointing his successor, in violation of the separation of powers -- were barred by the separation of powers clause from obtaining testimony from the Chief Justice, when he is the very person whose conduct is at issue and the person most able to testify to the circumstances surrounding the apparent violation⁹

As the Supreme Court emphasized in Office of the Governor, “the [legislature’s] ability to obtain evidence from the governor is in furtherance of the separation of powers principle, not in derogation of it[.]” Id. at 595. The Court characterized that investigatory power, when used in furtherance of the Legislature’s duty to restrain another branch’s violations of its powers, as “a check necessary to preserve the delicate balance of powers that represents the core principle underlying the separation of powers doctrine.” Id. The Court elsewhere explained: “the [Legislature’s] ability to obtain evidence from the governor precisely because it is conducting an

⁹ Although three other Justices have volunteered to testify, only Justice Sullivan can conclusively testify to his own conduct.

investigation into his conduct is in furtherance of the critical constitutional check, expressed in the separation of powers provision, on executive authority necessary to preserve the constitution's careful balance of powers, not in derogation of it." Id. at 579.

The Supreme Court in Office of the Governor concluded that the speech or debate clause -- a separation of powers-based protection of legislative independence -- did not deprive the Court of jurisdiction to consider a "colorable claim, brought in good faith, that the legislature conducted itself in violation of the principle of separation of powers[.]" Office of the Governor, 271 Conn. at 564. That is, the Legislature could not use separation of powers to shield its own alleged separation of powers violation from judicial scrutiny. Here, Justice Sullivan attempts to do just that -- use the separation of powers doctrine to shield his own separation of powers violation from legislative scrutiny. In Office of the Governor, all that the Supreme Court required for the Judicial Branch to exercise jurisdiction over the Legislature, thereby surmounting the Legislature's separation of powers protections against judicial interference, was a "colorable claim, made in good faith" that the Legislature had itself violated the separation of powers. It would be constitutionally illegitimate and unwarranted for the Judicial Branch now to hold the Legislature to a higher burden in seeking to investigate judicial separation of powers violations into its constitutionally established powers, as the Court's decision here does.

There is no question that the Legislature asserts in good faith a substantial claim that the Judiciary, through Justice Sullivan, has violated the separation of powers doctrine, and that the Legislature's subpoena to investigate this violation is a proper response to this intrusion. This should be -- and is -- enough to defeat the Judiciary's separation of powers objections to the

subpoena. Otherwise, Office of the Governor can only be explained as the Judiciary's granting itself an unprincipled separation of powers primacy over the Legislature, which would not only be wholly improper, but also would undermine public confidence in the judicial system. As Justice Palmer has warned, “[t]o maintain public confidence in our system of justice, judicial opinions must be true to the legal principles that they purport to apply ” State v. Brunetti, 276 Conn. 40, 142 (2005)(Palmer, J. dissenting), superseded on other grounds, 279 Conn. 39 (July 11, 2006).

It is irrelevant that the Legislature's inquiry is not in the context of a formal impeachment or removal proceeding. First, the Court misstates the legislative posture in the Office of the Governor case. At the time that the Legislature sought to compel Governor Rowland's testimony, ultimately with the Supreme Court's approval, no formal impeachment proceeding was pending, just as none is pending now. The Select Committee of Inquiry was formed specifically to investigate whether formal impeachment proceedings should be commenced against the Governor, not to adjudicate any impeachment charges. Similarly here, the Judiciary Committee, as the committee of cognizance over “all matters relating to courts, judicial procedures, and all matters relating to the Judicial Department,” has embarked on a preliminary investigation to determine, among other things, whether the initiation of formal removal or impeachment proceedings may be warranted. See Joint Rules of the Senate and House of Representatives, 2005-2006 Session, Rule 3(b)(6)(available at <http://www.cga.ct.gov/gae>). Certainly, the public record establishes a more than good faith basis for this inquiry, and there has not – nor could there be – any challenge to the Judiciary Committee's authority to conduct it.

This is certainly the case here, as there is no question that the publicly known facts justify, at least, the Legislature's consideration of impeachment or removal, and protection of its power of judicial appointment. The Court cannot and should not substitute its judgment for that of the Legislature in determining how to initiate or classify an investigation preliminary to the possible formal exercise of its impeachment or removal power, or to the vindication of its appointment power. To do so would itself enmesh the judiciary in matters of legislative procedure and prerogative and require the court to weigh and evaluate legislative motives in violation of the separation of powers doctrine. "Our cases make clear that in determining the legitimacy of a congressional act we do not look to the motives alleged to have prompted it." Eastland v. United States Servicemen's Fund, 421 U.S. 491, 508 (1975); see also, Nixon v. United States, 506 U.S. 224, 235 (1993)(holding nonjusticiable judge's claim that impeachment improperly commenced and procedurally faulty, stating "Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive, because it would eviscerate the important constitutional check placed on the Judiciary by the Framers. Nixon's argument would place final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.")(internal citation omitted).

Permitting the Legislature's subpoena in this instance would not invite open-ended intrusions into judicial functioning. The Legislature could not, for example, summon judges to explain their deliberative process, as there would be no good faith basis to assert that a disagreement over the substance of a decision would provide a reason to consider impeachment or removal. As discussed earlier, the present inquiry arises from an unprecedented, extrajudicial

act of the former head of the Judicial Branch intruding into the legislative sphere. It is this intrusion that provides the justification for the present subpoena. It must be assumed – and fervently hoped – that such a precipitating action will not occur again.

C. Under This Court's Logic, The Legislature Would Be Compelled To Take The Most Drastic Step Of Initiating An Impeachment Or Removal Proceeding To Seek Basic Information Concerning An Incursion On Its Appointment Power.

This Court's ruling grants Justice Sullivan unprecedented categorical immunity from responding to a legitimate legislative inquiry about his misuse of his judicial office for the specific purpose of interfering with the Legislature's appointment power.¹⁰ Apparently, this Court believes that the Legislature cannot investigate Justice Sullivan's conduct first, in a less formal manner, to determine if extreme measures -- such as removal or impeachment -- are justified, but rather has no choice but to formally initiate removal or impeachment proceedings if it wants to obtain any information from Justice Sullivan concerning his intrusion into the legislative sphere.

This result makes no sense under the circumstances of this case. Although in reaching its decision this Court relied on a law review article concerning congressional investigations of federal judges and the potential for abuse, the situations presented in the article are not the situation presented in the present case. See Tr. pp. 9-10, citing Todd David Peterson, Congressional Investigations of Federal Judges, 90 Iowa Law Review 1 (2004). The primary

¹⁰ As noted earlier, the fact that there is no appointment pending is completely and totally irrelevant. The position of Chief Justice is vacant and there is the immediate prospect of an appointment. The Legislature will soon be called upon to exercise its appointment power. Thus, inquiry into intrusion into this power is entirely legitimate.

thrust of the article, which relies on federal law, is that congressional subpoenas to jurists involving the performance of their judicial functions can be used as a pretext to retaliate against jurists and chill judicial independence. Id. at 57.

Under the narrow circumstances of this case, however, as demonstrated above, Justice Sullivan was not acting in the performance of his judicial functions when he deliberately withheld the Clerk of the Superior Court decision, contrary to established rules of the Court and unknown to the other panel members and parties to the case. There is absolutely no evidence that the Legislature's hearings are a pretext for the purpose of retaliating against the Judiciary, or that the Legislature seeks any information regarding the Justice's decision-making or deliberative process. Rather, based on the existing record -- the letters of Justice Borden reporting this matter to the Legislature and the Governor -- there is a substantial claim for the Legislature to investigate this matter to obtain relevant and necessary information from Justice Sullivan. Under these circumstances, where the hearings concern documented, not speculative, misconduct that interfered with the exclusive constitutional powers of the Legislative Branch of government, the legislative subpoena is crucial to the *preservation* of the separation of powers doctrine, and concerns over potential harm are unfounded. Accordingly, the plaintiffs' motion to quash should have been denied.

CONCLUSION

For all of the foregoing reasons, this Court should reconsider and reverse its decision quashing the defendants' subpoena and granting the plaintiffs' motion for preliminary injunctive relief

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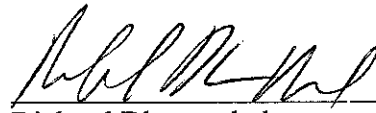
CERTIFICATION

I hereby certify that a copy of the foregoing was mailed, first class postage prepaid, this

13th day of July, 2006, to:

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Richard Blumenthal
Attorney General

LIST OF ATTACHED EXHIBITS

Letter to Governor Rell from Senator McDonald and Representative Lawlor, dated March 20, 2006	1
Letter to Senator McDonald and Representative Lawlor from Governor Rell, dated March 24, 2006.....	2
Letter to Justice Sullivan from Senator McDonald and Representative Lawlor, dated March 28, 2006.....	3
Letter to Senator McDonald and Representative Lawlor from Justice Sullivan, dated March 28, 2006.....	4
Letter to Counsel from Justice Sullivan, re: Clerk of the Superior Court, Geographical Area Number Seven et a. v. Freedom of Information Commission, dated April 24, 2006.....	5
Susan Haigh, <u>Lawmakers Negotiating With Supreme Court For Upcoming Hearings</u> , Hartford Courant (June 15, 2006).....	6
Letter to Governor Rell from Justice Sullivan, dated March 15, 2006	7
Press Release, "Governor Rell Announces Retirement of Chief Justice Sullivan; Nominates Associate Justice Zarella to Succeed Him," March 17, 2006	8

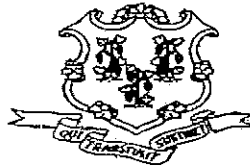
EXHIBIT 1

State of Connecticut

GENERAL ASSEMBLY

Senator Andrew J. McDonald
CO-CHAIRMAN

Senator MaryAnn Handley, *Vice-Chair*
Senator John A. Kissel, *Ranking Member*



Representative Michael P. Lawlor
CO-CHAIRMAN

Representative James Spallone, *Vice-Chair*
Representative Robert Farr, *Ranking Member*

JUDICIARY COMMITTEE

March 20, 2006

The Honorable M. Jodi Rell
Room 200, State Capitol
Capitol Avenue
Hartford, CT 06106

Dear Governor Rell:

We noted in the press over the weekend that you announced Chief Justice William Sullivan will retire from the Supreme Court effective April, 15, 2006. We join you in commending him for his years of service to the State of Connecticut and to the advancement of the rule of law. His service was indeed invaluable.

We also noted that you simultaneously expressed your intention to elevate Justice Peter Zarella to fill the position of Chief Justice. We were surprised by the speed with which you nominated a successor, particularly since no one from your office discussed the matter with the leadership of the House or Senate, or of the Judiciary Committee. While we have great respect for Justice Zarella, we are concerned with the timing of this proposed nomination. As you know, the Judiciary Committee faces a looming deadline for action on committee and raised bills. In addition, we anticipate an avalanche of referrals from other committees, many of which have already started. As you also know, this short session is the shortest conceivable under the Constitution and calendar.

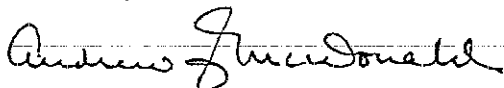
Our ability to properly review the proposed nomination of Justice Zarella during the next five weeks is seriously in doubt. Both your office and ours need to undertake extensive background checks and a review of Justice Zarella's performance during his tenure on the various courts in Connecticut. The proper consideration of a nomination to lead one of the three branches of government must not be compromised or hindered because of the vagaries of the calendar or our other obligations.

The Judiciary Committee is currently considering matters such as Probate Court reform, eminent domain reform and juvenile justice initiatives, to name a few. We respectfully request, therefore, that you delay forwarding your nomination of Justice Zarella until after May 3, 2006. Such a gesture on your part would greatly facilitate our ability to ensure that Justice Zarella gets the full, fair and complete review and attention that he

deserves. Selecting and confirming the head of a co-equal branch of government requires a level of attention that we cannot guarantee at this point without severely jeopardizing the important agendas that both you and we have during the current legislative session.

We thank you for your anticipated cooperation in this matter.

Sincerely,



Senator Andrew J. McDonald
Co-Chairman



Representative Michael P. Lawlor
Co-Chairman

c: Honorable Peter Zarella
Honorable William Lavery
Senator Donald E. Williams, Jr.
Senator Martin M. Looney
Senator Louis C. DeLuca
Representative James A. Amann
Representative Christopher G. Donovan
Representative Robert M. Ward

EXHIBIT 2



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

March 24, 2006

The Honorable Andrew J. McDonald
The Honorable John A. Kissel
The Honorable Michael P. Lawlor
The Honorable Robert Farr
Legislative Office Building
Hartford, CT 06106-1591

Dear Senators McDonald and Kissel and Representatives Lawlor and Farr:

Thank you for meeting with me Tuesday and for bringing to my attention your concerns surrounding my intention to nominate the Honorable Peter T. Zarella to serve as the next Chief Justice.

In the past the review and action by the Legislature of individuals nominated to serve as Chief Justice have occurred in a more timely manner than that proscribed by state statute. In fact, the nomination of Chief Justice Callahan was acted on by the Judiciary Committee and both houses of the Legislature within 7 days of nomination by the Governor. Similarly, consideration of Chief Justice Sullivan's nomination was acted on within 14 days of nomination by the Governor. Thus, I am sure that in the 40 days remaining in the current legislative session, the Judiciary Committee and the Legislature can, and will, properly consider Justice Zarella's nomination, including his exemplary contributions as a jurist and his management style and objectives for the Judicial Branch.

Justice Zarella is a skilled and capable jurist, who has served the State of Connecticut with distinction as a judge of the Superior, Appellate and Supreme Courts for the last 10 years. During that time, Justice Zarella has appeared before the Judiciary Committee four times for nomination and was subsequently confirmed by near unanimous votes each time by the Committee and the entire General Assembly. Clearly the Legislature is familiar with Justice Zarella's background, judicial history and judicial temperament.


Nearly six weeks remain in the current legislative session and I believe it is appropriate to ask the General Assembly to act swiftly on the nomination of Justice Zarella. I am aware that Justice Zarella, when confirmed as Chief Justice, will serve not only as a seated member of the State's highest court, but also as the head of a distinct branch of government. I encourage you to review Justice Zarella's credentials to serve as the chief executive of the Judicial Branch and I am confident that you will find he is very well qualified.

I also encourage you to provide Justice Zarella, in advance of your Committee's public hearing, with the specific questions and topics which the members of the Judiciary Committee would like him to address. Justice Zarella has assured me that he will make himself available to meet with you and the members of the Judiciary Committee well in advance of a public hearing. To assist you and your

colleagues, I will immediately make available to you the results of the extensive background check which the Connecticut State Police conducted at my request. Lastly, I am including with this letter the background questionnaires used by the Judiciary Committee to initiate its review of judicial nominations. The questionnaires have been prepared and signed by Justice Zarella and are accompanied by the forms authorizing the release to the Committee of information it may need in order to review Justice Zarella's nomination.

With the information that the Committee already has available to it and with more than a month remaining in the Legislative session, I believe you and your colleagues can accomplish a thorough and fair review of Justice Zarella's nomination. As such, I am submitting, via separate correspondence, a letter nominating Justice Zarella to serve as the next Chief Justice. Thank you for sharing your thoughts with me, and I sincerely appreciate the time and careful consideration that I am sure you will devote to Justice Zarella's nomination.

Very truly yours,


M. JODI RELL
Governor

Enc.

EXHIBIT 3

03/03/2006 10:14:23 FAX

003/007

State of Connecticut

GENERAL ASSEMBLY

Senator Andrew J. McDonald
CO-CHAIRMAN

Senator MaryAnn Handley, *Vice-Chair*
Senator John A. Kissel, *Ranking Member*



Representative Michael P. Lawlor
CO-CHAIRMAN

Representative James Spallone, *Vice-Chair*
Representative Robert Parr, *Ranking Member*

JUDICIARY COMMITTEE

March 28, 2006

VIA HAND DELIVERY

Chief Justice William J. Sullivan
231 Capitol Avenue
Hartford, CT 06106

Dear Chief Justice Sullivan:

Enclosed please find a copy of a letter we sent to Governor Rell last week, along with her response. Yesterday we received the formal nomination of Justice Zarella from the Governor.

We continue to be gravely concerned about the timing of this nomination and the ability of the General Assembly to act favorably on it within the next 21 legislative days.

We respectfully request, therefore, that you consider extending the effective date of your resignation until January 1, 2007. We understand that your planned retirement is to allow you more time with your family, and is not the result of any health care concerns. While we fully appreciate your desire to spend time with your family, we hope you can understand the state's need to have you at the helm of the Judicial Branch for a short period longer.

Such an accommodation by you would allow you to finish out the 2005-2006 terms of the Court and cases now pending on its docket. More importantly, however, it would permit the General Assembly to act on the nomination of Justice Zarella to be Chief Justice in an orderly and comprehensive fashion. Hopefully you share our belief that the legislative confirmation process, and the efficient operation of the Judicial Branch, can both be served by you delaying your retirement for 9 months.

Since time is of the essence in this matter, may we please hear back from you by Friday of this week?

Sincerely,

Handwritten signature of Andrew J. McDonald.

Senator Andrew J. McDonald
Senate Co-Chair

Handwritten signature of Michael P. Lawlor.

Representative Michael P. Lawlor
House Co-Chair

EXHIBIT 4



STATE OF CONNECTICUT
JUDICIAL BRANCH

CHAMBERS OF
WILLIAM J. LAVERY, JUDGE
CHIEF COURT ADMINISTRATOR

231 CAPITOL AVENUE
HARTFORD, CT 06106

March 28, 2006

Senator Andrew J. McDonald
Co-Chair, Judiciary Committee
LOB, Room 2501
Hartford, CT 06106

Representative Michael P. Lawlor
Co-Chair, Judiciary Committee
LOB, Room 2502
Hartford, CT 06106

Dear Senator McDonald and Representative Lawlor:

Thank you for your letter of today, March 28, 2006, concerning whether I would extend my retirement date to January 1, 2007. This is to advise you that this is not possible.

Thank you,

William J. Sullivan ^{mf}
William J. Sullivan
Chief Justice

WJS: edb

Dictated but not Read

EXHIBIT 5



STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
WILLIAM J. SULLIVAN
CHIEF JUSTICE
SENIOR

DRAWER N, STATION A
HARTFORD, CT 06106

April 24, 2006

RE-Clerk of the Superior Court, Geographical Area Number Seven et al
V. Freedom of Information Commission (SC 17273)

Dear Counsel,

I am writing to you relative to the above mentioned matter which was released on the Judicial Branch's Bulletin Board on Friday, April 21, 2006. Some members of the panel which decided this case believe that I should recuse myself from this matter based on the allegations set forth below. My recusal would result in another judge being added to the panel in my place. In that event there would be further deliberations on the matter and possibly further oral arguments.

The allegations are as follows and for the purposes of this letter accept them as true:

On or about March 14, 2006 this case was approved by the members of the panel at a conference of the court. That same day, the case was referred to the Office of the Reporter of Judicial Decisions (Reporter's Office) for editing and review by members of that office before the public release of the various opinions. In the normal course, the Reporter's Office reviews the opinion or opinions in a particular case for nonsubstantive purposes and, when that office has completed that editorial review of those opinions in conjunction with the justices who authored them, the opinions then are released to the public.⁶ In this case, however, Chief Justice Sullivan⁶ contacted the Reporter of Judicial Decisions on or about the same day that the opinions were approved, that is, March 14, 2006, and directed him to place this case on "hold" status, such that the case would not be released to the public until express authorization from Chief Justice Sullivan. Chief Justice Sullivan did not advise the other panel members of his instruction to place the case on hold.⁷

⁶ Former Chief Justice Sullivan retired and took senior status on April 15, 2006. For purposes of this opinion, I refer to him as Chief Justice on those occasions when he was acting in that capacity, and as Justice at all times thereafter.

⁷ Prior to Chief Justice Sullivan's instruction to place this case on hold, I can recall only two or three other times during my thirteen years as a member of this court that cases intentionally have been held up following approval by the panel. On those occasions, however, the hold was directed by an author of an opinion because that author had decided to make certain substantive modifications to the opinion, such that release of the opinion by the Reporter's Office in the ordinary course would have been premature. In those instances, the revised opinions were recirculated to each panel member; such recirculation was necessary in light of the substantive, as opposed to editorial, modification of the opinion. In my experience, therefore,



STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
WILLIAM J. SULLIVAN
~~CHIEF~~ JUSTICE
SENIOR

DRAWER N, STATION A
HARTFORD, CT 06106

No such member of the panel was aware that the case had been placed on hold until approximately three weeks thereafter. The fact that a hold had been placed on the case was revealed only when a staff person in the Reporter's Office, in response to a routine inquiry from a law clerk asking when that office would be finished with its review of the case, responded that the case had been placed on hold. That staff member, however, did not know why that action had been taken.

Approximately one week thereafter, in response to an inquiry from a member of the panel as to whether he knew that the case was on hold, Justice Sullivan acknowledged that he had placed the case on hold and that he had done so for the purpose of ensuring that the case would not be published prior to the Judiciary Committee hearing relating to the recent nomination of Justice Peter T. Zarella to the position of Chief Justice⁸. Upon being informed that the hold was improper, Justice Sullivan indicated that he was willing to remove the hold, and he did so that same day. The case was electronically released on the Judicial Branch web site on April 21, 2006, and is scheduled to be published in the Connecticut Law Journal on May 2, 2006.

It is alleged that Canon 1, Cannon 2(a) and 2(b), Canon 3(b) (1) and Canon 3 (b) (2) of the Code of Judicial Conduct have been violated by me. I do not believe that I have violated any provision of such Code.

I would also state that the actions alleged did not affect one word of the decision rendered in this matter.

However, in the interest of full disclosure to the parties I felt it proper to make you aware of these allegations. If any party has an opinion as to my participation in this case I will be happy to consider it.

Very Truly Yours,

William J. Sullivan
Senior Justice

the directive of the Chief Justice to place the case on indefinite hold was both unprecedented and extraordinary.

⁸ The announcement that Justice Zarella would be nominated to succeed Chief Justice Sullivan was made on March 17, 2006 approximately three days following Chief Justice Sullivan's directive that the case be placed on hold until further notice.

EXHIBIT 6

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The Associated Press State & Local Wire

June 15, 2006 Thursday 5:31 AM GMT

SECTION: STATE AND REGIONAL

LENGTH: 444 words

HEADLINE: Lawmakers negotiating with Supreme Court for upcoming hearing

BYLINE: By SUSAN HAIGH, Associated Press Writer

DATELINE: HARTFORD Conn.

BODY:

Four members of the state Supreme Court will be called to testify before lawmakers this month about former Chief Justice William Sullivan's decision to help a colleague's legislative confirmation

The extraordinary Judiciary Committee hearing, where one branch of government will question another, is scheduled to take place June 27 and could continue June 28

Lawmakers are still negotiating the circumstances under which the justices will testify. Rep Michael Lawlor, D-East Haven, the committee's co-chairman, said legislators have been meeting with two court liaisons and discussing issues from whether justices will be subpoenaed to whether they will testify under oath.

"It's precedent-setting," Lawlor said. "We're all concerned about the right way to do this "

Committee leaders want to know more about why former Chief Justice William Sullivan delayed the release of a court ruling earlier this year to help Peter Zarella, Gov M. Jodi Rell's nominee for chief justice. Zarella voted with the majority to keep certain records secret from the public.

Rell, at Zarella's request, has since withdrawn the nomination until after the hearing

Lawmakers said they also want to know more about apparent problems within the state's highest court. And they plan to ask about related matters, such as rules and procedures followed by the court and the operation of the Judicial Review Commission, which investigates allegations of wrongdoing.

Rell has not said whether she will re-nominate Zarella or name another person to oversee the state's Judicial Branch. Her spokesman said she is waiting to see what the committee learns during its hearing.

Four justices are expected to testify. They include Zarella, Sullivan, Justice Richard Palmer and acting Chief Justice David Borden.

Lawmakers negotiating with Supreme Court for upcoming hearing The Associ

During a Judiciary Committee meeting Wednesday, some legislators expressed concern about possibly interfering with another branch of government.

"I think we ought to be mindful of the harm we might do to the institution," said Rep. William Dyson, D-New Haven. "We ought not be rushing to any judgment."

Sen. Andrew McDonald, D-Stamford, co-chairman of the Judiciary Committee, said the lawmakers are cooperating with the Judicial Branch and Republicans on the committee to make sure the process is appropriate.

"It will undoubtedly be a difficult path to walk, but we are hopefully treading lightly on that path," McDonald said.

New legislation could result from the hearing. The committee's options range from doing nothing to recommending impeachment, Lawlor said. Sullivan, who retired in April, is now a senior justice, meaning he can still hear some cases when other justices aren't available.

LOAD-DATE: June 16, 2006

EXHIBIT 7



STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
WILLIAM J. SULLIVAN
CHIEF JUSTICE

231 CAPITOL AVENUE
HARTFORD, CT 06106

March 15, 2006

The Honorable M. Jodi Rell
Governor
State Capitol
Hartford, CT 06106

Dear Governor Rell:

I wish to notify you that on April 15, 2006, I will be stepping down as Chief Justice of the Supreme Court and, on that date, assume Senior Justice status.

I have enjoyed my tenure as Chief Justice. It has been a great honor for me to serve the people of the state of Connecticut in this position for the past 62 months.

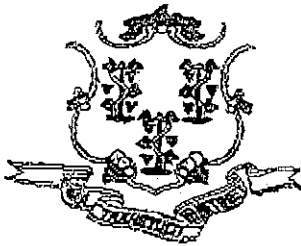
Sincerely yours,

A handwritten signature in black ink, appearing to read "William J. Sullivan".
William J. Sullivan
Chief Justice

WJS:ld

EXHIBIT 8

The Office of Governor M. Jodi Rell
Press release - 03/2006



M. JODI RELL
GOVERNOR

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS
HARTFORD, CONNECTICUT 06106

FOR IMMEDIATE RELEASE
March 17, 2006

Contact:
Judd Everhart
860-524-7313
judd.everhart@ct.gov

**Governor Rell Announces Retirement of Chief Justice Sullivan;
Nominates Associate Justice Zarella to Succeed Him**

Governor M. Jodi Rell today announced the retirement of Connecticut Supreme Court Chief Justice William J. Sullivan and said she would nominate Associate Justice Peter T. Zarella as Chief Justice. Justice Sullivan is stepping down April 15 and will take "Senior Justice status" on the high court bench.

"After three decades of thoughtful, incisive leadership in law and the courtroom, Justice Zarella has earned this nomination," Governor Rell said. "He has a remarkable ability to balance the best interests of the parties involved with the requirements of the law, and issue opinions supported by the facts and informed with fairness. I am confident the General Assembly will applaud and confirm this nomination.

"At the same time, I would like to thank, on behalf of the people of Connecticut, Chief Justice William Sullivan for the legacy of leadership and the example he has set on the Connecticut Supreme Court," the Governor said. "It is fair to say that Chief Justice Sullivan is one of the most respected judges on one of the most respected courts in the country. Our court has that reputation because of judges like him. I wish him only the best."

Chief Justice Sullivan is a 67-year-old Democrat from Waterbury. After graduating from Providence College in 1962, he received a law degree from the College of William and Mary in 1965. An Army veteran of the Vietnam War, Chief Justice Sullivan was named to the Superior Court bench in 1978. He was nominated to the Appellate Court in 1997 and then to the Supreme Court in 1999. He was nominated as Chief Justice in 2001.

Associate Justice Zarella, a West Hartford Republican, is a 1972 graduate of Northeastern University who earned a law degree in 1975 from Suffolk University Law School. After almost 20 years in private practice, he was appointed to the state Superior Court bench in 1996. The 56-year-old jurist was named to the state Appellate Court in 2000 and then to the Supreme Court in 2001. He also formerly served as Chairman of the Connecticut Criminal Justice Commission.

The Zarella nomination now goes to the General Assembly's Judiciary Committee for a public hearing and vote, before moving to the full General Assembly for confirmation.

"Our judges keep our society moving forward as they weigh the issues of the day and strive to do what is right, fair and appropriate," Governor Rell said. "We require our judges to possess a natural, instinctive sense of fairness and an ability to sort through the complexities of today's legal arguments and arrive at decisions that protect and serve the public interest.

"Justices Sullivan and Zarella have served Connecticut very well indeed and the people of this state are the clear beneficiaries of their service," the Governor said.

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